

AN INTERNATIONAL ORGANIZATION DEDICATED TO PROTECTING THE RIGHTS OF ALL ANIMALS

PETA
FOUNDATION

November 2, 2016

*Via e-mail, first-class mail and
certified mail return receipt requested*

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**Re: Notice of Intent to File Citizen Suit Pursuant to the
Endangered Species Act; Missouri Primate Foundation**

Pursuant to Section 11 of the Endangered Species Act (ESA), 16 U.S.C. § 1540(g)(2)(A)(i), this letter constitutes notice that People for the Ethical Treatment of Animals, Inc. ("PETA") and Angela Scott ("Scott") intend to file suit, after the expiration of the 60-day notice period, against Missouri Primate Foundation, a Missouri nonprofit corporation ("MPF"), located at 12338 State Rd. CC, Festus, MO 63028, and against Connie Braun Casey ("Casey") as an individual and in her capacity as the President of MPF, Andrew Sawyer ("Sawyer") (owner of chimpanzee Joey); and Jane Does 1 and 2 ("Does") (owners of chimpanzees Allie and Chloe), in federal district court pursuant to 16 U.S.C. § 1540(g)(1)(A) for chronic and ongoing violations of the ESA, 16 U.S.C. § 1538(a)(1)(B), (G), and its implementing regulation, 50 C.F.R. § 17.21(c)(1).

Specifically, PETA and Scott intend to file suit under the ESA against MPF and Casey to challenge and enjoin MPF and Casey's ongoing "take" of approximately sixteen chimpanzees (the "Chimpanzees"), and against Sawyer and Does to challenge and enjoin their ongoing "take" of the chimpanzees they own, unless they are placed in a reputable sanctuary or sanctuaries accredited by the Global Federation of Animal Sanctuaries (GFAS).

PETA has secured placement for the Chimpanzees at an appropriate GFAS-accredited sanctuary and will arrange the placement, transport, and

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APPLICATES

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- PETA AUSTRIA
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EXHIBIT

A

veterinary care necessary for their relocation, should MPF, Casey, Sawyer, and Does wish to correct the ESA violations described below. This sanctuary would provide the Chimpanzees with large, complex environments that would give them the opportunity to climb, explore, and express species-typical behavior.

I. The Endangered Species Act

The ESA prohibits the “take” of endangered and threatened species within the United States. 16 U.S.C. § 1538(a)(1)(B), (G); 50 C.F.R. §§ 17.21, 17.31(a). “The term ‘take’ means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(19). “‘Take’ is defined . . . in the broadest possible manner to include every conceivable way in which a person can take or attempt to take any fish or wildlife.” *Babbitt v. Sweet Home Chapter of Communities for a Great Or.*, 515 U.S. 687, 704-05 (1995) (citing S. Rep. No. 93-307, p. 7 (1973); U.S. Code Cong. & Admin. News 1973, pp. 2989, 2995); *see also* H.R. Rep. No. 93-412, p. 154, 150 (1973) (the House Report stated that “the broadest possible terms” were used to define restrictions on takings and includes “harassment, whether intentional or not”).

Chimpanzees are listed as endangered under the ESA, 50 C.F.R. § 17.11(h), and as of September 14, 2015, all captive chimpanzees are included under the Act’s protections, *see* 80 Fed. Reg. 34499 (June 16, 2015) (amending the regulatory language of the ESA’s special rules to remove the exclusion of captive chimpanzees from the Act’s protections).

As described below, the conditions in which MPF and Casey maintain the endangered chimpanzees in their custody “harm”¹ and “harass”² those animals, constituting a “take” in violation of the ESA, 16 U.S.C. § 1538(a)(1)(B), (G), and its implementing regulation, 50 C.F.R. § 17.21(c)(1).

II. MPF and Casey Take Chimpanzees in Violation of the ESA.

A. MPF and Casey confine Joey, a highly social chimpanzee, in isolation.

In nature, chimpanzees live in groups and interact with members of their community in myriad and complex ways. They lead active, stimulating lives and form deep and lasting social bonds, which are critical to their long-term health and psychological well-being. They live in multi-male, multi-female, multi-generational communities with unique cultural customs. They have sophisticated methods of communication—through calls, body language, and facial expressions—and engage in affectionate social grooming. Male

¹ “Harass” is defined by regulation as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.” 50 C.F.R. § 17.3.

² “‘Harm’ . . . means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.” *Id.*

chimpanzees remain with their natal families for their entire lives and form close social bonds with other males in order to hunt cooperatively, establish social order, protect their mates, and maintain territorial boundaries.

Even though Joey is a member of a highly social endangered species, Sawyer has apparently boarded him at MPF indefinitely to be confined in isolation. Joey has been denied the companionship of a single other chimpanzee since his return to MPF two to three years ago. His entire world consists of a small enclosure with cement flooring, rudimentary paintings of chimpanzees and foliage on the walls, empty barrels, a blanket, a ladder, and a few toys from Sawyer. There is a television that is kept on immediately outside of the door to his enclosure.

According to the world's leading experts, long-term solitary confinement is extremely distressing for chimpanzees. Joey experienced the psychological trauma of being removed from his mother shortly after birth at MPF, sold as a pet to Sawyer, and later returned to MPF when Sawyer could not adequately care for him and/or hold him lawfully. Joey has lived in isolation from other chimpanzees during his formative years, which, in terms of emotional trauma, is analogous to placing a human toddler in solitary confinement. It is well-established that isolation and human-rearing of a chimpanzee has long-term negative effects on his behavior and well-being. In the opinion of experts, by holding Joey isolated from any other chimpanzee, Sawyer, Casey, and MPF are failing to meet the standard of care that he requires to be psychologically healthy, and to remain in such conditions would further impair his psychological well-being and development and lead to captive neuroses. Stereotypical behaviors—repetitive, pointless movements resulting from stress, anxiety, psychosis, and poor welfare—are common among chimpanzees confined under inadequate conditions and include, among other things, chronic over-grooming, body rocking, and, in some severe cases, self-mutilation.

Likewise, the U.S. Department of Agriculture (USDA), which administers the Animal Welfare Act (AWA), a separate federal law that establishes the *minimum* animal-care and handling standards for both endangered and non-endangered captive animals used in exhibitions such as by MPF and Casey, has acknowledged that “[s]ocial interactions are considered to be one of the most important factors influencing the psychological well-being of most nonhuman primates.” USDA, Animal & Plant Health Inspection Service, *Final Report on Environment Enhancement to Promote the Psychological Well-Being of Nonhuman Primates* § IV.A (1999) [hereinafter “USDA Primate Report”]. Companions provide more than just social company. They supply “environmental novelty, multi-sensory stimulation, something to manipulate, and opportunities for cognitive challenge and control.” *Id.* § IV.A.10. Hence, “[a]ppropriate social enhancement is one of the most versatile and option-laden forms of enhancement we can provide” to chimpanzees. *Id.* Because “social primates are very much physical contact animals,” the USDA underscores that “[c]ontinuous full contact housing, in pairs or appropriately structured social groups allows primates to express sophisticated social adaptations.” *Id.* § IV.A.9.

Neither the sounds from the television nor the paintings on the walls of Joey's cell can replace the complex and stimulating interactions and strong bonds with other members of

his species. Depriving Joey of the social interaction and psychological stimulation fundamental to his physical, social, and psychological well-being constitutes a take in violation of the ESA.

To be sure, however, it would not remedy the violations for MPF and Casey to simply decide to house Joey together with the other chimpanzees. Because of the unpredictability of the other chimpanzees' response to Joey and the potential for the older chimpanzees to harm Joey—who is young and has apparently not lived with another chimpanzee since he was taken from his mother and thus has not yet learned appropriate social behaviors—any introductions must be done by experts with the experience, knowledge, and resources to carry out such introductions safely in an appropriate environment. MPF and Casey lack the fundamental training and experience to manage such an introduction, as well as the staff necessary to supervise the chimpanzees round-the-clock to ensure that they are not harmed. However, unlike MPF, the GFAS-accredited facility at which PETA has secured placement possesses all of those necessary resources: expert staff who have successfully introduced dozens of chimpanzees; state-of-the-art facilities that are designed for safe, gradual introductions; and a staff with both the numbers and the experience to oversee the animals before, during and for an extended period after their introduction to each other or potentially more compatible companions.

In addition, it would not remedy the violations, but could instead lead to separate ESA violations against MPF and Casey or Sawyer for them to transfer Joey to another zoo or private party through interstate transactions, absent a permit issued only for limited purposes, which does not include private ownership or public display. *See, e.g., Elephant Justice Project v. Woodland Park Zoological Soc'y, Inc.*, No. C15-0451-JCC (W.D. Wash. Apr. 7, 2015).

B. MPF and Casey Deny the Chimpanzees the Complex Environments they Require.

Chimpanzees are a highly intelligent species who require novel and complex environments to thrive in captivity. Denying them the opportunity to engage in species-typical behavior, such as climbing, foraging, social grooming, and play, is a significant source of stress. The Chimpanzees at MPF are confined in cramped, virtually barren enclosures, many of which deny the chimpanzees the ability to climb, brachiate, or engage in other natural chimpanzee behaviors.

According to the USDA Primate Report, “[t]he social, developmental, and physical environment are interdependent in enhancing psychological well-being” of primates, and the components of the animal’s physical environment “should combine to create opportunities for species-typical resting, exploration, play, and foraging, as well as social interaction and adjustments.” USDA Primate Report § IV.C. Adequate enclosure space “is not just a question of numeric dimensions or total volume, but also one of shape and design. The space must be structured to be useable and species appropriate. This can be achieved through a variety of furnishings, projections, contours and floor coverings.” *Id.* As such, “[u]se of legal cage size will not always meet an animal’s behavioral

requirements.” *Id.* Environmental enhancement should therefore include opportunities to express species-typical behaviors, such as:

- Foraging, which provides chimpanzees with “[m]ental stimulation . . . by requiring them to complete cognitive tasks to obtain their food,” *id.* § IV.D.1;
- Nest-building, *id.* § IV.C.7 (“Many chimpanzee experts consider the provision of bedding material to chimpanzees essential for their comfort”);
- Climbing, *id.* § IV.C.6 (studies have found that of all primates, “chimpanzees used upper levels of enclosures and perimeter areas the most”); and
- Play and tool use, *id.* § IV.E.

Hence, regulations issued by the USDA to implement its obligations under the AWA require that animal exhibitors “develop, document, and follow an appropriate plan for environment enhancement adequate to promote the psychological well-being of nonhuman primates.” 9 C.F.R. § 3.81. This plan “must be in accordance with currently accepted professional standards, as cited in appropriate professional journals or reference guides.” *Id.* “The central idea” of this regulation “is that nonhuman primates must be given an environment in which they can express the wide range of behaviors practiced by others of their species in nature. Their captive environments must be enhanced to give them opportunities to exhibit these behaviors. When such conditions are achieved, the intent of the Animal Welfare Act to promote their psychological well-being will be fulfilled.” USDA Primate Report § II.E. The AWA regulations provide the absolute minimum standards that must be met in order to obtain a license to exhibit animals under that law, but compliance with the regulations does not indicate compliance with the ESA, which provides heightened protections to endangered species. Yet MPF and Casey have failed to meet even these minimum standards.

At MPF, the Chimpanzees are confined to cages that lack sufficient space, both horizontally and vertically, to allow them to express the physical behaviors of a chimpanzee, and they are deprived of appropriate enrichment items and experiences.

Chloe and Mikayla are held in a converted bedroom enclosure made with metal bars and fencing. There are sawdust shavings on the hard floor and no adequate enrichment—they are given ropes, a barrel, a small wooden table, and a large vertical metal spring in the center of the floor. Like Joey, the walls of their room have been painted with simple depictions of grass and other greenery. They have no access to any other area of the facility, and must be walked out on a leash to be moved, which happens very rarely.

In the blue room, there are three groups of chimpanzees separated in the cages—Joey; Tonka and Tammy; and Connor, Candy and Allie. The floor of the cages is unfinished and the chimpanzees are given sawdust shavings as bedding. The cages feature the same metal bars as the enclosure in which Chloe and Mikayla are held. They contain only barrels to sit on and some plastic toys that have been destroyed. They are held inside constantly, with their only outdoor access being a small area off of the room similar in size to a dog run and tunnel that runs above it.

Similarly, in the pink room, there are two to three groups of chimpanzees separated in the cages on either side of the room—Kirby, Daisy and KK; and Kimmy, Crystal, Kerry, Cooper, and Coby. Reportedly, Kimmy will often not eat because she is scared of Coby, and he is sometimes isolated for that reason. The cages are no more than three-feet wide and the chimpanzees are reportedly given no enrichment because toys and other items could potentially clog the drains in the room. The only climbing opportunities are on the chain-link walls of the cages.

While the facility has an outdoor enclosure that is significantly improved from the indoor cages, it is accessible only from the pink room, and only the chimpanzees held in the pink room are allowed out. Reportedly, because Casey finds it daunting, time consuming, and dangerous to move the chimpanzees between enclosures at the facility, the eight chimpanzees who are held in other enclosures are never given access, and Tammy, Tonka, Connor, Chloe, and Mikayla may never have stepped foot into this outdoor space. While “[t]he most salient factor in structuring a captive primate’s environment is the tendency to use vertical space,” USDA Primate Report § IV.C.6, Chloe, Mikayla, Joey, Tonka, Tammy, Connor, Candy and Allie are held in enclosures in rooms with a ceiling only as high as the average home, depriving them of any meaningful opportunity to climb.

Even those chimpanzees who would otherwise be given access to the outdoor enclosure are apparently confined indoors on concrete substrate constantly during the colder months. Chimpanzees are native to the tropical climate of Equatorial Africa. In contrast, the average daily maximum temperature in Festus is 43° in December, 41° in January, and 46° in February with average daily minimum temperatures below 25° in each of those months. There is no indication that MPF and Casey—which do not provide the Chimpanzees with adequate enrichment opportunities during warmer months—are providing any additional enrichment to accommodate any increase in time spent indoors during the winter months.

MPF and Casey have been cited by the USDA for failing to follow an environmental enhancement plan to address the Chimpanzees’ social and psychological needs. On March 3, 2014, the USDA sent Casey a warning letter documenting that AWA violations were found on several occasions and noting that more severe measures may be taken if the violations are not addressed. The letter included a non-exhaustive summary of recurrent violations, including a violation of 9 C.F.R. § 3.81(c)(2) as a result of the facility’s “repeated failure to provide a plan addressing the special needs of a non-human primate that shows signs of being in psychological distress through behavior and appearance.” USDA, Letter of Information to Casey (Mar. 3, 2014). Specifically, on January 7, 2014, following several repeat citations for the failure to provide adequate enrichment to other primates showing signs of distress, a USDA inspector observed that Crystal and Tammy had “excessive generalized hair loss throughout their entire coat,” and cited MPF, noting that: “Excessive grooming resulting in hair loss is often a sign of distress and could be due to a lack of mental stimulation of socialization. Animals who pluck hairs may need additional environmental enhancement to promote their

psychological well-being and prevent them from self-mutilating.”³ Indeed, it has been reported that nearly every chimpanzee who was raised at MPF has exhibited stereotypical behaviors, including over-grooming and rocking, likely caused by the stress and anxiety of living in wholly inadequate conditions.

The stressful nature of these inadequate conditions is only exacerbated by the many dogs living at the facility who, when the chimpanzees are in tunnels or enclosures visible from the outside, jump and bark at them incessantly.

MPF and Casey continue to deny the Chimpanzees an environment in which they can “express the wide range of behaviors” that chimpanzees exhibit in nature. It has also failed to “create opportunities for species-typical resting, exploration, play, and foraging, as well as social interaction and adjustments.” Depriving the Chimpanzees of the social interaction and psychological stimulation fundamental to their physical, social, and psychological well-being constitutes a take in violation of the ESA, and Sawyer and Does are similarly subject to liability for indefinitely boarding Joey, Chloe, and Allie in these conditions.

C. MPF and Casey Deny the Chimpanzees a Sanitary Environment.

Unsafe and unsanitary conditions are a chronic problem at MPF, putting the Chimpanzees’ health and welfare at risk. The USDA has issued the following citations—just over the past three years—that directly impact the Chimpanzees:

- “Many of the enrichment items in the enclosures had an accumulation of black-brown build-up on them,” water receptacles “had an excessive build-up of slimey [sic] brown-green algae-like material in them,” there was bedding material caked on the bars, and there were cobwebs, “an excessive amount of rodent droppings,” hundreds of flies in the pink room, and “general dirt/dust/debris” throughout the enclosures. Several feeders “had a build-up of dark material on them.” USDA, Inspection Report of MPF (Sept. 17, 2013).
- “There was a strong, foul odor of generalized waste and excreta upon entering the pink room. The ammonia levels were noticeably high and irritated the nasal passageways of the inspectors.” The enclosures had bedding caked on the bars, there were cobwebs and “dirt/dust/debris” throughout, and items in the enclosures “had an accumulation of black-brown build-up on them,” a repeat violation. Several feeders “had a build-up of dark material on them” and attracted flies. USDA, Inspection Report of MPF (Jan. 10, 2014).
- “There were several enclosures which had not been cleaned properly,” a repeat violation, including items “with a build-up of black-brown grime,” a urine-stained

³ While MPF has not since been cited for lack of an enrichment plan, citations are completely discretionary and their absence does not indicate compliance. Indeed, it is reported that all of the chimpanzees at the facility now exhibit such excessive grooming.

concrete floor in Joey's enclosure, the walls of the pink room had "brown organic material smeared on them" and there was a rag hanging in the enclosure "which was soiled black-brown with fecal materials." USDA, Inspection Report of MPF (Apr. 29, 2014).

- "There was a strong odor of both feces and ammonia upon entering the pink room," "an excessive amount of flies" in the pink room, cockroaches around a chimpanzee enclosure, and flies in a food storage container. The enclosures also "were not cleaned properly or at appropriate frequencies," a repeat violation. Specifically, at least two of the tunnels connecting the enclosures had trash and waste accumulating in them, Joey's enclosure had a build-up of what appeared to be deteriorating food waste, there was "a build-up of black grimy material and/or organic waste material" around the bars in the pink room, and a pipe in the pink room was covered in what appeared to be flyspeck and flies. USDA, Inspection Report of MPF (Oct. 29, 2014).
- The enclosures "ha[d] not been cleaned and sanitized properly or at appropriate frequencies," a repeat violation, including "a build-up of black grimy material and/or organic waste material" around the bars in the pink and blue rooms. Now a repeat violation, "There was a strong ammonia odor upon entering the pink room." USDA, Inspection Report of MPF (Dec. 9, 2014).
- An enclosure "containing two chimpanzees had food waste that had accumulated" and had a "moldy appearance." Casey told inspectors that the food waste had not been picked up for 3 days. This was a repeat violation. USDA, Inspection Report of MPF (Oct. 5, 2015).
- There was excessive "food waste and excreta on the floors . . . in nearly all the enclosures," a repeat violation, and "numerous cockroaches . . . throughout most of the facility—both in and outside of animal enclosures." There were so many dead cockroaches throughout the facility such that Casey "has to sweep twice daily," and "still too many live ones" for the pest control program to be considered effective. USDA, Inspection Report of MPF (Jan. 5, 2016).

As noted above, in March 2014, the USDA sent Casey a warning letter, which documented not only the facility's repeated failure to provide a sufficient enrichment plan, but also the recurrent violations identified from 2011 to 2014, for failing to clean surfaces and food receptacles, remove animal and food wastes, and provide sufficient ventilation to minimize odors and ammonia levels. In February 2015, as a result of continuing violations, the USDA issued an Official Warning to Casey for failing to adequately clean the facilities and inadequate ventilation in the pink room. USDA, Official Warning: Violation of Federal Regulations, MPF (Feb. 9, 2015).

These conditions persist. In several of the enclosures, the Chimpanzees are given water in old plastic buckets placed outside of the cage, with a cut portion of a hose to use as a straw. The buckets are open, and regularly are littered with debris and dead flies due to a fly infestation. Additionally, roaches remain common throughout the facility, there is excessive food waste and trash in the enclosures, feces build-up on barrels in the

enclosures and encrusted on the Chimpanzees' feet, and the strong ammonia stench from excessive urine and inadequate ventilation make it difficult to breathe in the pink room. MPF and Casey's ongoing failure to provide the Chimpanzees with a sanitary environment constitutes a prohibited "take" in violation of Section 9 of the ESA, 16 U.S.C. §1538(a)(1)(B), and Sawyer and Does are similarly subject to liability for indefinitely boarding Joey, Chloe, and Allie in these conditions.

Reportedly, MPF does not have any employees and the daily care of these endangered animals falls to Casey, whose funds are limited primarily to social security income, and few inadequately trained and relatively inexperienced volunteers. The Chimpanzees receive only minimal veterinary care, and Casey has struggled to obtain care for urgent issues during business hours. MPF and Casey's failure to provide the Chimpanzees with adequate veterinary care also constitutes a prohibited "take" in violation of the ESA, 16 U.S.C. §1538(a)(1)(B).

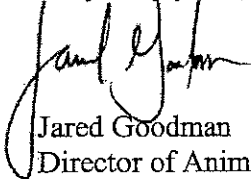
Finally, it appears that MPF and Casey are not preventing breeding between the Chimpanzees, housing sexually mature females with sexually active males, including those who have previously mated. It is also believed that MPF and Casey may currently be holding a newly-bred chimpanzee, who was separated from his/her mother—a highly traumatic experience for both mother and infant. Historically, MPF and Casey have bred chimpanzees to sell them for profit, and the ESA prohibits the sale and transport of any listed animal who has been "taken." 16 U.S.C. § 1538(a)(1)(D).

* * *

Please be advised that the conditions set forth herein violate the ESA's prohibition on the "take" of the Chimpanzees. Unless the violations described herein cease immediately, PETA and Scott intend to file suit against MPF, Casey, Sawyer, and Does under the ESA at the expiration of sixty (60) days following November 2, 2016. Pursuant to the ESA, the plaintiffs will seek declaratory relief and an injunction against continued violations, including, but not limited to, requesting that the court order the transfer of the Chimpanzees to a GFAS-accredited sanctuary, as well as attorney's fees and litigation costs.

As discussed above, PETA has secured a place for the Chimpanzees at a GFAS-accredited sanctuary. Should MPF, Casey, Sawyer, and Does wish to cure the violations described herein and thereby avoid litigation, contact me immediately in order to facilitate placement. Any and all communication related to this matter should be directed to me.

Very truly yours,



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